

Before the
MONTGOMERY COUNTY COMMON OWNERSHIP COMMISSION
Montgomery County, Maryland

In the Matter of

Decoverly IV Townhouse Association, Inc.	x	
c/o The Management Group	x	
Suite 250	x	
One Bank Street	x	
Gaithersburg, MD 20878,	x	
Complainants,	x	
	x	
v.	x	Case No. 756-G
	x	January 31, 2006
Robert Rubin	x	
10148 Vanderbilt Circle	x	
Rockville, MD 20850,	x	
Respondent.	x	

DECISION AND ORDER

The above-entitled case comes before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to §§ 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission, having considered the testimony and evidence of record, finds, determines and orders as follows:

Background

On or about March 10, 2005, Steve Leskowitz, manager for the Decoverly IV Townhouse Association (Complainant), filed a complaint with the Office for Common Ownership Communities against Robert Rubin (Respondent), owner of 10148 Vanderbilt Circle, Rockville, MD, a unit within Decoverly IV. The complaint alleged that Respondent had installed a window air conditioning unit without approval of the architectural control committee as required by the community Declaration.

Mr. Rubin answered the complaint, saying that the master bedroom in his house has inadequate heating and cooling and that the only practical solution to the problem is to install the window heating and cooling unit that he has installed.

Inasmuch as this matter was not resolved by mediation, the dispute was presented to the Commission on Common Ownership Communities for action pursuant to § 10B-11(e) of the Montgomery County Code on June 1, 2005, and the Commission accepted jurisdiction. A hearing was held on December 14, 2005.

Findings of Fact

The Decoverly IV Declaration at Article VII, Section 1., says in relevant part:

...nor shall any exterior addition to or change (including any change of color) or other alteration thereupon be made until the complete plans and specifications showing the location, nature, shape, height, material, color, type of construction and any other proposed form of change...shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by the Board of Directors acting as the Architectural and Environmental Control Committee.

Subject to the same limitations as hereinabove provided for, it shall be prohibited to install, erect, attach, apply, paste, hinge, screw, nail, build, alter, remove or construct any lighting, shades, screens, awnings, patio covers, fences, walls, slabs, sidewalks, curbs, gutters, patios, balconies, porches, driveways, or to make any change or otherwise alter (including any alteration in color) in any manner whatsoever the exterior of any improvements constructed upon any lot...or to remove or alter any windows or exterior doors of any dwelling, until the complete plans and specifications, showing the location, nature, shape, height, material [sic] color, type of construction and any other proposed form of change...shall have been submitted to and approved in writing as to the safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by the Architectural and Environmental Control Committee designated by the Board.

Photographs of the window heating/cooling system in Mr. Rubin's unit were introduced into evidence. They showed that the system was visible and extended out from the window several inches. Mr. Rubin pointed out that the window in which this system is installed is in the rear of the unit on the third floor.

Decoverly IV adopted 14 pages of architectural standards and guidelines in 1993. In the original there is no mention of window air conditioners or heating/cooling units.

Mr. Rubin testified that he did not understand the Declaration to require application and approval for installation of a window heating and cooling system. He

testified that there were two other similar systems but the unit owners in both of the units in which they were installed have since moved out of the community.

In June 2003, the Board of Directors added a section to the architectural guidelines that prohibited “window air conditioning units or other structure that extends past the external plane of the structure of any home.” The language of the amendment explicitly permitted such units installed before August 2003 to remain in place for a year but required their removal by July 31, 2004.

Mr. Rubin argued that the amendment to the architectural guidelines was evidence that the Declaration did not require application and approval to install a window heating and cooling system.

Conclusions of Law

The language of the Decoverly IV Declaration is similar to that of the documents of many common ownership communities in which the intent is to control the external appearance of the structures in the community to maintain overall uniformity and style.

This language is reasonably construed, as Decoverly IV construes it, to prohibit any alteration that affects the external appearance of a unit without an application and approval from the designated community board or committee. This includes installation heating/cooling system that extends out of the window of a unit. Mr. Rubin did not apply for such approval.

The recent amendment to the architectural guidelines provides the additional information to unit owners in the community that window systems for cooling and/or heating will not be permitted; it does not change the preexisting requirement for written approval of an external alteration.

Mr. Rubin’s window heating/cooling system is an unapproved external alteration in violation of the Decoverly IV Declaration.

ORDER

Mr. Rubin must remove his window heating/cooling system within 60 days from the date of this order.

Panel members Vicki Satern Vergagni and Jeff Kivitz have concurred in the foregoing decision and order.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days

from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

Dinah Stevens, Panel Chairwoman
Commission on Common Ownership
Communities